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2 KAREN POWELL
3 Special Assistant Attorney General
4 Montana State Auditor
5 840 Helena Avenue
6 Helena, MT 59601
7 406-444-2040

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BEFORE THE STATE AUDITOR
AND COMMISSIONER OF SECURITIES
HELENA, MONTANA

9 IN THE MATTER OF.) Case No.: 08-29-05- I
10 Texas Encore Materials, Inc. (a/k/a TEM)
11 Corporation) and) NOTICE OF PROPOSED AGENCY
12 Mark Hungerford) ACTION AND OPPORTUNITY FOR
13 Respondents) HEARING
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14 Staff of the Securities Department of the office of the State Auditor and Commissioner of
15 Securities of the State of Montana (Commissioner), pursuant to the authority of the Securities
16 Act of Montana, §§ 30-10-101, et seq., Mont Code Ann. (2003), is proposing to the
17 Commissioner that he take action against Respondents Texas Encore Materials, Inc. (TEM)
18 Corporation and Mark Hungerford (Hungerford), of 8452 East Oregon Place, Denver, CO 80231,
19 for violations of the Securities Act of Montana (hereafter "Act"). The Commissioner has
20 authority to take such action under the provisions of Mont. Code Ann. §§ 30-10-102, 30-10-107,
21 30-10-201, 30-10-301, 30-10-304, 30-10-305, 30-10-307 and 30-10-309.

22 Service of process is pursuant to §30-10-107(8), Mont. Code Ann.

23 ALLEGATIONS OF FACTS

- 24 1. On or about October 21, 2003 a Montana investor, JN, invested \$5,000.00 with Mark
25 Hungerford and on November 19, 2003 she invested another \$5,000.00 with Hungerford.
Both checks were for an investment in Texas Encore Materials, Inc., a/k/a TEM

1 Corporation. At the time of both investments, Hungerford resided at 2038 Overland
2 Avenue, Billings, MT 59102.

3 2. On or about December 12, 2003 Hungerford sent JN an e-mail via e-mail which indicated
4 she would receive 2,500 shares for her first investment of \$5,000.00, at \$2.00/share, in
5 TEM and that "no later than 10 February 2004 they should be worth then at least
6 \$3.60/shares, a gain of 80%."

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8 3. In the same above referenced e-mail, Hungerford told JN that her "second tranuch"
9 investment of \$5,000 would result in her receiving an additional 2,500 shares of TEM, at
10 \$2.00/share, but in a different pool. Hungerford guaranteed JN that this second
11 investment would be "redeemed in late February or early March, 2004, and at no less
12 value than the \$2.40/share, and possible above \$2.60/share."

13 4. To date, JN has received no certificates for her investment and her "second tranuch"
14 purchase of 2,500 shares was never redeemed and there is not now, nor has there ever
15 been, a public market for TEM's common stock.

16 5. JN never received a prospectus, disclosure information or any materials relative to her
17 investment in TEM.

18 6. TEM allegedly "offers a full line of recycled rubber based products from highly
19 engineered recycled content thermoplastic elastomers to low cost recycled polypropylene
20 fillers" pursuant to its website located at <http://www.texasencore.com>.

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22 7. JN attempted to contact Hungerford via e-mail on May 19, 2004 and June 12, 2004 but
23 received no response.

24 8. JN filed a complaint with the Department, through her attorney Geoffrey R. Keller of
25 Matovich & Keller, P.C., on July 1, 2004, against TEM and Hungerford.

- 1 9. On August 16, 2004 the Department sent a request for information letter to Hungerford
2 via certified mail at his last known addresses of 2280 Grant Road, Suite B, Billings, MT
3 59102, 2038 Overland Avenue, Billings, MT 59102 and 8452 East Oregon Place, Denver,
4 Co 80231. Hungerford never picked up any of the letters.
- 5 10. On August 16, 2005 the Department did a criminal justice search for Hungerford's last
6 known address and determined he resided at 8452 East Oregon Place, Denver CO 80231.
7 On August 23, 2005 the Department sent a final request for information to Hungerford at
8 this address via United Postal Service. Hungerford did not respond to this request.

10 CONCLUSIONS OF LAW

- 11 1. The Commissioner has jurisdiction over this matter by virtue of Texas Encore Materials,
12 Inc. and Hungerford's offer and sale of securities in Montana to investors located within
13 and outside of Montana.
- 14 2. Texas Encore Materials, Inc. and Hungerford transacted securities business in Montana, §
15 30-10-103(22) and (24), Mont. Code Ann.
- 16 3. Hungerford sold securities to investor JN. § 30-10-103(20) and § 30-10-103(22)(a),
17 Mont. Code Ann.
- 18 4. An investment in Texas Encore Materials, Inc. is common stock and thus constitute
19 securities as defined by § 30-10-103(22), Mont. Code Ann.
- 20 5. The definition of "offer" or "offer to sell" includes "each attempt or offer to dispose of
21 or solicitation of an offer to buy a security or interest in a security for value." § 30-10-
22 103(15), Mont. Code Ann.
- 23 6. A salesperson offering or selling common stock to or from this State must be registered or
24 exempt from the registration provisions pursuant to §30-10-201, Mont. Code Ann.
- 25 7. Pursuant to §30-10-301(1)(b), Mont. Code Ann., it is unlawful to omit a material fact
necessary to prevent investors from being misled.

- 1 8. Pursuant to §30-10-301(1)(b), Mont. Code Ann., it is unlawful to misrepresent a material
2 fact necessary to prevent investors from being misled.
- 3 9. Pursuant to §30-10-301(1)(c), Mont. Code Ann., it is unlawful to engage in any act,
4 practice or course of business that operates or would operate as a fraud or deceit upon an
5 investor
- 6 10. Upon each conviction of a violation of any part of Title 30, Chapter 10, Mont. Code Ann.,
7 Texas Encore Materials, Inc. (TEM) and Mark Hungerford are subject to an
8 administrative fine of not more than \$5000 and subject to the rescission requirements of
9 the Montana Securities Act.

11 RELIEF REQUESTED

12 WHEREFORE, the Department seeks the following relief:

- 13 1. Imposition of an administrative fine for each violation of the Securities Act of
14 Montana. The maximum fine allowed pursuant to the Act is \$5,000 for each violation,
15 pursuant to §30-10-305(3), Mont. Code Ann.
- 16 2. Imposition of rescission to JN in the amount of \$10,000.00 plus statutory interest at the
17 rate of 10% per annual, pursuant to §30-10-309(1), Mont. Code Ann.
- 18 3. Imposition of an administrative fine for each violation of §30-10-301, Mont. Code
19 Ann., of not more than \$5,000.
- 20 4. The Department seeks a finding that all sanctions and remedies detailed and described
21 here are in the public interest and necessary for the protection of Montana investors.
- 22 5. The Department seeks a finding as fact the allegations set forth in paragraphs 1-10 of
23 the Conclusions section, above.
- 24 6. Any further action as deemed just and appropriate for the protection of Montana
25 investors.

STATEMENT OF RIGHTS

1 You are entitled to a hearing on the NOTICE OF PROPOSED AGENCY
2 ACTION and to respond to this notice and present evidence and arguments on all issues
3 involved in this case. You may have a formal hearing before a hearing examiner
4 appointed by the Commissioner. This is provided for by the Montana Administrative
5 Procedure Act, §§ 2-4-601, Mont. Code Ann., and following, including § 2-4-631, Mont.
6 Code Ann. If you demand a hearing, you will be given notice of the time, place and the
7 nature of the hearing.

8 You have a right to be represented by an attorney at any and all stages of this
9 proceeding.

10 If you want to contest the proposed action under the jurisdiction of the
11 Commissioner, you must so advise him within fifteen (15) days of the date you receive
12 this notice. See §30-10-201(16), Mont. Code Ann., pending final determination of this
13 proceeding. You may so advise him by writing to Karen Powell, Special Assistant
14 Attorney General, State Auditor's Office, 840 Helena Ave., Helena Avenue, Helena,
15 Montana, 59601. While so advising Ms. Powell, you should make clear whether you
16 demand a hearing, or whether you waive formal proceedings and, if so, what informal
17 proceedings you prefer for handling this case. Pursuant to § 2-4-603(2), Mont. Code
18 Ann., you may not request to proceed informally if the action could result in suspension,
19 revocation or any other adverse action against a professional license

20 Should you request a hearing, you have the right to be accompanied, represented,
21 and advised by counsel. If the counsel you choose has not been admitted to practice law
22 in the State of Montana, he or she must comply with the requirements of Application of
23 American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

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25 CONTACT WITH SECURITIES COMMISSIONER'S OFFICE

1 If you have questions or wish to discuss this matter, please contact Ms. Powell at
2 (406) 444-2040 or, within Montana (800) 332-6148. If you are represented by an
3 attorney, please make any contacts with this office through your attorney.

4 POSSIBILITY OF DEFAULT

5 If no hearing is requested within fifteen (15) days of receipt of this order by
6 Respondents, and the Department orders none, the above allegations of fact will be
7 declared findings of fact and the above proposed conclusions of law will be declared
8 conclusions of law. Respondents would then be subject to all applicable penalties.
9 Pursuant to Mont. Code Ann. §2-4-603(2), you may not request to proceed informally if
10 the action could result in suspension, revocation or any other adverse action against a
11 professional license.

12 DATED this 29 day of August, 2005.

13 John Morrison
14 JOHN MORRISON
State Auditor and Securities Commissioner

15 CERTIFICATE OF SERVICE

16
17 I hereby certify that I served a true and correct copy of the foregoing NOTICE OF
18 PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING on the following
person by certified mail, on this 29 day of August, 2005.

19 Mark Hungerford
8452 East Oregon Place
20 Denver, CO 80231

21 Texas Encore Materials, Inc.
8452 East Oregon Place
22 Denver, CO 80231

23 Pamela Wait
24 State Auditor's Office
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